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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/617,186 | 07/09/2003 | Hideki Hagiwara | 393032038900 | 3003 |

7590 03/04/2009
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| EXAMINER |
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FAULK, DEVONAE

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2614

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| MAIL DATE | DELIVERY MODE |
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03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/617,186

Applicant(s)

HAGIWARA, HIDEKI

Examiner

DEVONA E. FAULK

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7 and 9-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 11, 15, 17 and 19 is/are rejected.
- 7) ☐ Claim(s) 3-10, 12-14, 18, 20-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/22/09 has been entered.

Response to Arguments

2. Applicant's arguments, regarding the groupings of the channels are different as between any given two of the grouping types, filed 1/22/09, with respect to the rejection(s) of claim(s) 1,11,15,17 and 19 under 103 (a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Suzuki.
3. Applicant's arguments filed 1/22/09 have been fully considered but they are not persuasive regarding the amendment to the preamble of claims. The applicant has failed to tie the preamble to the body of the claims. Therefore, the examiner asserts that the amendment to the preamble does not hold any weight regarding the claim.
4. Claims 2,8 and 16 are cancelled.

Claim Objections

5. Claims 3-6,9,10,12-14,18, 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 101

Claim(s) **1,3-7,9-14,20-22** is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent¹ and recent Federal Circuit decisions² indicate that a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. The limitations of claims 1 and 11 are not tied to another statutory category.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

7. Claims 1,11,15,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bizjak (US 7,212,640) in view of Suzuki (US 5,054,077).

Claims 1, 11, 15, and 19 share common features.

Regarding claim 1, Bizjak discloses a level adjustment method applicable to an audio processing apparatus, the level adjustment method comprising:

A group type select process of selecting a grouping type among a plurality of grouping types, according to operation by a user (column 30, line 55-65; Figures 8C-8G);

A group arrangement process of arranging the plurality of the channels into one or more group according to the selected grouping type (column 30, line 55-column 31, line 12);

A detection process of detecting, for each group, a maximal value of the signal levels of the input audio signals or channels belonging to the group (column 31, lines 25-42); and

An adjustment process of determining, for each group, a common amplification gain according to the detected maximum value and supplying the determined common amplification gain to the amplifiers of the channels belonging to the group such as to attenuate the output levels of the input audio signals if the maximum value exceeds a threshold specified by the user (column 32, lines 25-35; column 33, line 64-column 34, line 25).

Bizjak teaches of inputs having associated input level adjusters (column 34, lines 47-51).

Bizjak fails to explicitly teach of having a plurality of amplifiers corresponding to three or more of channels of audio signals for inputting the audio signals and amplifying the input audio signals.

Amplifiers are level adjusters. The examiner takes official notice that amplifiers are well known in the art. It would have been obvious to modify Bizjak so that an amplifier corresponds to three or more channels of audio signals for the benefit of amplifying the audio signals.

Bizjak fails to disclose that the groupings of the channels are different as between any given two of the grouping types.

Suzuki discloses groupings of channels that are different as between any given two of the grouping types (See Figure 4; column 3, lines 41-60). It would have been obvious to modify Bizjak so that the groupings of channels are different between any given two of the grouping types so that absolute amounts of fading in the respective channels in the group can be readily recognized.

Regarding claims 11, 15 and 19, the elements of these claims are all rejected using Bizjak and Suzuki as applied above in the rejection of claim 1.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bizjak (US 7,212,640) in view of Suzuki (US 5,054,077) in further view of Wiser et al. (US 7,363,096).

Regarding claim 17, Bizjak as modified discloses an audio processing apparatus having a plurality of level adjusters corresponding to channels of an input audio signals for amplifying the input audio signals, the graphic user interface being designed for

assisting the audio processing apparatus in performing a level adjustment method comprising a group arrangement process of arranging the plurality of the channels into one or more group, and a group control process of controlling each group such as to attenuate the output levels of the input audio signals belonging to the same group as a maximal value of the signal levels of the input audio signals belonging to the same group increases (column 30, line 55-65; Figures 8C-8G; column 31, lines 25-42; column 32, lines 25-35; column 33, line 64-column 34, line 51).

Bizjak teaches of inputs having associated input level adjusters (column 34, lines 47-51).

Bizjak fails to explicitly teach of having a plurality of amplifiers corresponding to three or more of channels of audio signals for inputting the audio signals and amplifying the input audio signals. Amplifiers are level adjusters. The examiner takes official notice that amplifiers are well known in the art. It would have been obvious to modify Bizjak so that an amplifier corresponds to three or more channels of audio signals for the benefit of amplifying the audio signals.

As noted above Bizjak teaches of a user selecting a desired grouping of the channels at the group arrangement process and determining how the output audio signals is attenuated according to the maximal signal level during the group process.

Bizjak as modified fails to disclose a graphical user interface installed in an audio processor having a visual symbol prompting the user to select desired grouping of the channels at the group arrangement process and another visual symbol prompting the

user to input parameters effective to determined how the output audio signals is attenuated according to the maximal signal level during the group process

Wiser discloses a graphical user interface installed in an audio processor have two visual symbols that enable various audio processing (Figures 7-14; column 11, line 19-column 23, line 11).

Prior art Wiser has noted the benefits of using a graphical user interface to implement audio processing. It would have been obvious to try to use a GUI having visual symbols that prompt the user to select desired grouping of the channels at the group arrangement process and another visual symbol prompting the user to input parameters effective to determined how the output audio signals is attenuated according to the maximal signal level during the group process with a reasonable expectation of success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devona E. Faulk/
Examiner, Art Unit 2614